HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION Nos.18426 and 18465 of 2007

WRIT PETITION No.18426 of 2007:

Between:

P.Srividya.

... Petitioner

And:

The Government of Andhra Pradesh,
Represented by its Principal Secretary,
Health, Medical and Family Welfare Department,
Secretariat, Hyderabad and others.

... Respondents

Counsel for the petitioner : Shri Pannala Srinivas

Counsel for respondent No.1: Government Pleader for Health,
Medical & Family Welfare Dept.

Counsel for respondent No.2: Shri D.V.Nagarjuna Babu
Standing Counsel.

WRIT PETITION No.18465 OF 2007:

Between:

Sardar Jaspal Singh and another.

...Petitioners.

And:

Government of Andhra Pradesh represented
by its Principal Secretary, Health, Medical

and Family Welfare Department, Secretariat,
Hyderabad and others.

…Respondents

Counsel for the petitioner : Shri P.V. Sanjay Kumar

Counsel for respondent No.1: Government Pleader for Health,
Medical & Family Welfare Dept.

Counsel for respondent No.2: Shri D.V.Nagarjuna Babu
Standing Counsel.

; COMMON ORDER :

Dated: 28th September, 2007

Per C.V.NAGARJUNA REDDY, J.

Since identical issues arise in these two writ petitions, they are being disposed of by a common order.

The petitioners in these writ petitions sought for a writ of mandamus to invalidate the amendment brought out to Rule 9 of the Andhra Pradesh Unaided Non Minority Professional Institutions (Regulation of Admission to under graduate Medical and Dental Professional Courses) Rules 2007 whereby Sub-clause C to Sub Rule 3 of Rule 9 has been inserted. The petitioners also sought for setting aside the allotment of MBBS seat to respondent No.5 who is common in both the writ petitions, under NCC quota, by holding that the certificate obtained by respondent No.5 after the qualifying examination of EAMCET, 2007 cannot be the basis for fixing the priorities.

The facts in brief, shorn of needless details, run as under:

The petitioners and respondent No.5 in the two writ petitions completed their intermediate course and appeared for EAMCET, 2007 Examinations conducted on 4-5-2007. It is not in dispute that all of them have got qualified in the said entrance test. The Government of Andhra Pradesh in exercise of its Rule making power under Sections 3 and 15 of the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 framed rules called the Andhra Pradesh Unaided Non Minority Professional Institutions (Regulation of Admission to under graduate Medical and Dental Professional Courses) Rules 2007 (for short “the Rules”), in supercession of the earlier Rules issued in the year 2004 and

published in Andhra Pradesh Gazette dated 2.5.2007. The said Rules, inter-alia, provided for reservations in favour of SC, ST and BC communities to the extent of 15%, 6% and 25% respectively. In addition to these reservations, the Rules provided for reservation for special category under three heads, namely; (i) Physically handicapped (3%), (ii) National Cadet Corps (NCC) (1/4%) i.e., 0.25% and (iii) Games and Sports (1/2%) i.e., 0.50%. Rule 9 (3) (a) under which these reservations for special categories are provided reads as under:

> "Seats shall be reserved in each course for the following categories to the extent indicated against them."

Before counselling for admissions into the various courses was commenced, the Government made amendment to Rule 9 by adding clause (c) to Sub-rule 3 of Rule 9 and the said clause reads as under:

> "The reservations for special categories mentioned in clause (a) above shall be provided on the basis of compartmentalized horizontal reservations for each category of OC, BC, SC and STs".

In the affidavits filed in support of their respective writ petitions, which are almost similar to each other, the petitioners contended that the State Government by the impugned amendment changed the method of computation of seats for the special reservation candidates. It is averred in the affidavits that this amendment was evidently introduced by the State Government in view of its providing 4% reservation in favour of various Muslim communities and that in order to see that overall percentage of reservations does not exceed 50 as mandated by the Supreme Court in **Indra Sawhney v. Union of India**[1]. According to the petitioners, the State Government misunderstood the scope of social reservations traceable to article 15

(4) and the quotas that can be provided by the State as traceable to Article 15 (1) of the Constitution in favour of Special categories. It is further averred that since the quotas provided for special categories like physically handicapped and NCC cannot be treated as reservations, there was absolutely no need for the State Government to include the percentage of reservations provided for special categories in the social reservations while arriving at the overall percentage of reservations. In other words, according to the petitioners while calculating the percentage of reservations in order to ascertain whether the 50% rule as per the Supreme Court's mandate is adhered to or not, the special reservations cannot be taken into consideration at all. The petitioners also averred that by following the method of compartmental horizontal reservations instead of taking the total number of seats in each of the three university areas, the official respondents have reduced total number of seats and virtually denied the benefit of quota for the NCC candidates belonging to SC, ST and BC communities and that this procedure being followed is wholly contrary to the procedure followed in the previous years and also the judgments of the Supreme Court.

The petitioners also pleaded that respondent No.4 committed a serious error in treating Respondent No.5 under priority I by taking into account the Youth Exchange Programme (YEP) Certificate obtained by her in the month of May, 2007 i.e., long after the qualifying examination (intermediate, according to the petitioners) which she completed in the year 2005 and after appearing for her EAMCET Examination.

Respondents 1,2,4 and 5 filed separate counters affidavits.

On behalf of Respondent No.1, Sri A.Ravikumar Dy. Secretary to Government, Health Medical and Family Welfare Department filed

the counter affidavit. He referred to the judgment of the Supreme Court in **Indra Sawhney (1 supra)** and averred that while the social reservations, which are called vertical reservations are made under Article 16(4) (obvious mistake for Article 15), special reservations which are called horizontal reservations are made under Article 16(1). He also referred to the judgment of the Supreme Court in **Anil Kumar and others v. State of U.P. and others**[2] and stated that according to the dicta laid down in the said judgment it is desirable that the horizontal reservations are compartmentalized to avoid prejudice to one or the other vertical reservation category. It is also stated in his counter-affidavit that where the candidates belonging to the special reservations category falling under horizontal reservations are selected under merit, they can be adjusted in general or reserved category to which they belong as the case may be and that this procedure was held valid in **Swati Gupta v. State of U.P. and others**[3]. He also referred to the Judgment in **M. Nagaraju v. Union of India**[4] whereunder the Supreme Court reiterated that the reservation should not exceed 50%. It is, therefore, stated that the State has decided to follow the method of compartmental horizontal reservation in respect of special categories. It is further averred that since the issues raised in W.P.No.15267 of 2007 and batch which pertain to reservations provided for Muslim minority category have a direct bearing on the issue raised in these writ petitions and the that five Judge Bench of this Court deferred hearing of the said batch in view of the consideration of the similar issues by a Constitution Bench, adjudication of the issues raised in these writ petitions may also be deferred.

On behalf of respondent No.2, Sri Y.Kotaiah, In-charge Registrar, NTR University filed a counter-affidavit in which it is interalia

contended that following the amendment made to Rule 9(3) providing for compartmental horizontal reservation, the University applied the said method while working out the reservations for special categories by calculating 0.25% on total number of seats available in respect of each of the categories, namely; OC, BC., SC and ST. It is also stated that as per the rules notified in G.O. Ms. No. 183 dated 30-6-2007 as amended in GO.Ms. No.136 dated 30-4-2007, the Directorate of NCC, Andhra Pradesh is the competent authority for scrutiny and confirmation of the documents produced by the candidates claiming reservation under NCC category and that officials of NCC Directorate after verifying the original certificates of the candidates submitted the merit list wherein respondent NO.5 is placed at Serial No.1.

On behalf of Respondent No.4 Air Cmde AC Bharali, VM Dy.Director General, NCC Directorate (Andhra Pradesh) filed a counter-affidavit wherein he sought to justify treating Respondent No.5 under priority-I. It is mentioned that for claiming any benefit under NCC category quota, the candidates have to achieve their claims and that the qualifying examination in this regard is EAMCET and not intermediate or 10 + 2 which only decide the eligibility of candidate to appear for EAMCET. He explained the scheme of YEP by stating that it starts during the Republic Day every year by conducting a written test by Directorate General, NCC, New Delhi and followed by personal interviews; thereafter the list of candidates is prepared and forwarded to the State Directorate to keep candidates ready with their passports and other documents required to travel abroad; as and when approval of friendly nation is received, the short listed candidates are sent for YEP and that respondent No.5 was short listed in the month of January itself and finished her YEP before EAMCET counselling and that she was rightly placed under priority-I at the top of the list.

Respondent No.5 also filed a counter-affidavit wherein it is stated that the official respondents having considered her certificates allotted a seat to her and she may not be denied admission.

Heard Sri P.V.Sanjay Kumar, the learned counsel appearing in Writ Petition No.18465 of 2007 who lead the arguments and also Sri Pannala Srinvas, learned counsel appearing in Writ Petition No.18426 of 2007, who supplemented the arguments of Sri P.V. Sanjay Kumar, learned Government Pleader for Health, Medical and Family Welfare Department for respondent No.1 and Sri D.V.Nagarjunababu, learned Standing Counsel for respondent No.2.

All the learned counsel reiterated the contentions contained in their respective pleadings. Having carefully perused the pleadings and the material on record and hearing the arguments of the learned counsel, we find that two issues arise for consideration. They are:

(1) Whether clause 'c' of Rule 9 (3) as introduced by the amendment notified in G.O.Ms.No.231 dated 11-7-2007 is legal and valid and

(2) Whether the allotment of a seat in favour of respondent No.5 by placing her under priority-I is proper and correct?

Re – Issue No.1:

I n **Indira Sawhney (1 supra)**, the Constitution Bench while dealing with reservations and public employment held that there are two types of reservations, referred to as vertical reservations and horizontal reservations. The reservations in favour of SCs, STs and other Backward Classes traceable to Article 16 (4) were termed as vertical reservations, whereas reservations in favour of physically handicapped relatable to clause (1) of Article 16 were called horizontal reservations. It was further held that horizontal reservations cut across the vertical reservations and it was also called interlocking

reservations. The procedure to be adopted in applying the vertical reservations was also explained by illustrating that if 3% of the vacancies are reserved in favour of physically handicapped persons, the person selected against this quota will be placed in the appropriate category; if a person belongs to SC Category, he will be placed in that quota by making necessary adjustments; similarly if he belongs to open competition (OC) Category, he will be placed in that category by making necessary adjustment. It was further explained that even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains and should remain the same (see para 812).

Sri P.V.Sanjay Kumar laid heavy emphasis on the judgment in **Anil Kumar Gupta (2 supra)** in support of his contention that the method introduced by the impugned amendment is contrary to the law laid down therein. Learned counsel in particular invited our attention to para 18 of the said judgment. In order to appreciate his contention it is necessary to undertake a detailed analysis of the said judgment.

As an upshot of the judgment of the Supreme Court in **Indra Sawhney (1 supra)**, the State of Utter Pradesh issued a notification on 17-5-1994 providing for reservations for different categories in medical course. They include special reservations for dependents of freedom fighters and sons and daughters of soldiers who died in war, handicapped soldiers, handicapped candidates and candidates belonging to hill areas. This was challenged in **Swati Gupta (3 supra)** on the ground that the total percentage of reservations exceeded the maximum ceiling of 50% as laid down in **Indra Sawhney (1 supra)**. While the said writ petition was pending, the State Government modified the reservation policy by making it clear that the aforementioned five special category reservations would be horizontal

and that the candidates falling under these categories will be adjusted against the seats reserved for the social reservation categories to which they belong. The said writ petition was disposed of by the Supreme Court in view of the said amendment. Thereafter, State of Utter Pradesh issued a clarification to the effect that the vertical reservations in all medical colleges shall be applied on total seats of all courses in respect of three categories, namely; SC, ST and OBC and as a result of which reservation in favour of women was removed from all the reservation categories. In the light of the revised notification and the aforementioned clarification, the Lucknow University issued a corrigendum to the effect that reservations in favour of aforementioned five categories shall be horizontal and not vertical. It was provided in the said corrigendum that the horizontal reservation in respect of the said five categories shall be provided on the total seats of all the courses of every medical college to be filled up on the basis of combined free medical test, 1994. Similarly, it was also provided that vertical reservations for SCs, STCs and BCs shall be provided on the total number of seats of every course in every medical college. The admissions made in accordance with the said amendment and notifications were questioned before the Supreme Court.

In the counter-affidavit filed on behalf of the Utter Pradesh State Government, it was explained that the total number of seats available for MBBS course in Government College, Utter Pradesh was 746, 15% of the said number (Special reservation category) came to 112 seats, out of 112 seats, 101 students were selected and all of them belong to General Category, unreserved seats were filled up first and while doing so, 101 students were selected on the basis of horizontal reservations since they belong to General Category and they had to be

adjusted against un-reserved seats, nine belonging to other OBC category secured equal marks as General candidates and thus they were selected on merit, these candidates were adjusted against unreserved category, the remaining 263 seats were filled through general candidates, 201 candidates of OBCs were selected against reserved seats, 157 were selected against the schedule castes and 15 were selected as against the scheduled tribes.

The main challenge to the procedure followed by the Lucknow University was mounted on the ground that having announced that the special social reservation categories will be adjusted against this respective social reservation categories, the University failed to follow this in reality. It was demonstrated before the Court that 110 out of 112 candidates of special reservation categories were adjusted in the OC category alone, though 34 candidates among them belonged to different social reservation categories but not adjusted against them.

In the background of the aforementioned facts, the Supreme Court explained the difference between overall horizontal reservations and compartmentalized horizontal reservations in para 15 which is extracted below:

> "On a careful consideration of the revised notification of 17-12-1994 and the aforementioned corrigendum issued by the Lucknow University, we are of the opinion that in view of the ambiguous language employed therein, it is not possible to give a definite answer to the question whether the horizontal reservations are overall reservations or compartmentalized reservations. We may explain these two expressions. Where the seats reserved for horizontal reservations are proportionately divided among the vertical (social) reservations and are not intertransferable, it would be a case of compartmentalised reservations. We may illustrate what we say: Take this very case; out of the total 746 seats, 112 seats (representing fifteen percent) should be filled

by special reservation candidates; at the same time, the social reservation in favour of Other Backward Classes is 27% which means 201 seats for OBCs; if the 112 special reservation seats are also divided proportionately as between OC, OBC, SC and ST, 30 seats would be allotted to the OBC category; in other words, thirty special category students can be accommodated in the OBC category; but say only ten special reservation candidates belonging to OBC are available, then these ten candidates will, of course, be allocated among OBC quota but the remaining twenty seats cannot be transferred to OC category (they will be available for OBC candidates only) or for that matter, to any other category; this would be so whether requisite number of special reservation candidates (56 out of 373) are available in OC category or not; the special reservations would be a watertight compartment in each of the vertical reservation clauses (OC, OBC, SC and ST) . As against this, what happens in the overall reservations is that while allocating the special reservation students to their respective social reservation category, the overall reservation in favour of special reservation categories has yet to be honoured. This means that in the above illustration the twenty remaining seats would be transferred to OC category which means that the number of special reservation candidates in OC category would be 56 + 20 = 76. Further, if no special reservation candidate belonging to SC and ST is available then the proportionate number of seats meant for special reservation candidates in SC and ST also get transferred to OC category. The result would be that 102 special reservation candidates have to be accommodated in the OC category to complete their quota of 112. The converse may also happen, which will prejudice the candidates in the reserved categories. It is, if course, obvious that the inter se quota between OC, OBC, SC and ST will not be altered."

What in effect, the Supreme Court held was that in case of overall horizontal reservations if sufficient number of candidates belonging to the special reservation categories is not available in a particular social reservation category, the excess quota allotted for that

category will be taken out of that category and adjusted against the other social groups in order to satisfy the overall percentage of the quota earmarked for the special reservation category. In case of compartmental horizontal reservations, the excess seats are not taken out of the respective categories to which they are allotted, but adjusted within each social group.

The Supreme Court in paragraph 18 held that the proper and correct method to be followed in giving effect to the Horizontal and vertical reservation seats is to first fill up O.C. quota on the basis of merit, then fill up each of the social reservation quotas i.e., SC, STC and BC, the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If quota for reservation for Horizontal category is already satisfied in case it is an overall horizontal reservation, no further question arose but if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by tallying corresponding number of candidates therefrom. It was further held that in the case of a compartmentalized horizontal reservation, when the process of verification and adjustment/accommodation should be applied separately to each of the vertical reservations and that in such a case reservation of 15% in favour of special categories over all, may be satisfied or may not be satisfied.

Having explained the distinction between the two categories of horizontal reservations, the supreme Court pointed out that by filling all but 2 out of 112 seats allotted for special category in the O.C. general category, serious error was committed. In order to remedy the injustice, the Supreme Court directed that in the matter of admissions

made pursuant to the Entrance Test of 1994 without disturbing the admissions already made, the State Government was directed to create additional 34 seats in O.C. category and fill them with eligible O.C. candidates by following the merit list.

In **Anil Kumar Gupta**, the issue as to, while calculating the percentage of horizontal reservations, the total number of available seats shall be taken in to account or the percentage shall be worked on the number of seats in each social group neither fell for consideration nor any finding in this regard was given by the Supreme Court. The Supreme Court in that case has not even decided which of the two methods is proper or desirable and this aspect is left to the authorities themselves to specify. This is evident from the following observations in para 17, which read as under:

> "It would have been better – and the respondents may note this for their future guidance – that while providing horizontal reservation they should specify whether the horizontal reservation is a compartmental one or an overall one."

While finding fault with the method of filling up the seats by the Lucknow University, the Supreme Court in para 18 observed as under:

> "Now, coming to the correctness of the procedure prescribed by the revised notification for filling up the seats, it was wrong to direct the fifteen per cent special reservation seats to be filled up first and then take up the OC (merit) quota (followed by filling of OBC, SC and ST quotas). The proper and correct course is to first fill up the O.C. quota (50%) on the basis of merit; then fill up each of the social reservation quotas, i.e., SC, ST and BC; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied – in case it is an overall horizontal reservation – no further question arises. But if it is not so satisfied, the requisite number of

> special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (If, however, it is a case of compartmentalized horizontal reservation, then the process of verification and adjustment/accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen per cent in favour of special categories, overall, may be satisfied or may not be satisfied). Because the revised notification provided for a different method of filling the seats, it has contributed partly to the unfortunate situation where the entire special reservation quota has been allocated and adjusted almost exclusively against the OC quota."

From the above reproduced part of the judgment on which Sri P.V. Sanjay Kumar placed heavy reliance, we do not find any ratio as to how percentage of special reservations has to be arrived at. Instead, the Supreme Court explained how the seats have to be adjusted after the percentage is worked out. We are therefore of the view that this judgment neither supports the case of the petitioners nor has any bearing on the short issue involved in these writ petitions.

The State Government evidently in order to ensure that the overall reservations provided for admissions in the educational institutions should not exceed 50%, introduced the compartmentalized horizontal reservations in respect of special reservation categories, by providing that the percentage of seats shall be worked on total number of seats available in each social category. While our constitution obligates the State to ensure to its citizens equality in providing educational and employment opportunities, it has at the same time provided for exceptions within reasonable limits to the general rule. While as a part of affirmative action the State is providing reservations for socially and educationally backward classes, to encourage

activities such as Sports, Games etc., special reservations are provided for these categories. But in **Indra Sawhney (1 supra)** the Supreme Court held that such special reservations can be provided for in very exceptional situations. It is relevant to refer to the observations of the Supreme Court in para 744 of the said case, which read as under:

> "(B)ut at the same time, one thing is clear. It is very exceptional situation – and not for all and sundry reasons – that any further reservations of whatever kind, should be provided under clause (1). In such cases, the State has to satisfy, if called upon, that making such a provision was necessary (in public interest) to redress the specific situation. The very presence of clause (4) should act as a damper upon the propensity to create further classes deserving special treatment. The reason for saying so is very simple. If reservations are made both under clause (4) as well as under clause (1), the vacancies available for free competion as well as reserved categories would be correspondingly whittled down and that is not a reasonable thing to do."

It is therefore necessary to keep in mind the exceptional nature of reservations provided by the State for special categories and the caution administered by the Supreme Court that in providing reservations under both Articles 16 (1) and 16(4) (Articles 15(1) and 15(4) are the corresponding Articles for educational institutions) the vacancies for open competition shall not be allowed to be whittled down.

No citizen as of right can claim benefits of reservations unless and until the State either by an executive order or appropriate legislation make them available. Viewed from this stand point, if in order to adhere to 50% rule, the State adopts a method of calculation which results in reduction of quota to persons belonging to special categories that by itself does not render the action invalid, unless it

violates any of the constitutional or legal rights of the person, who claims to have felt aggrieved by such action. The learned counsel have not pointed out violation of any such rights of the petitioners by the impugned amendment.

Further, we are of the view that as per the dicta laid down in **Indra Sawhney (1 supra)**, vertical reservations should always cut across the social reservations (horizontal reservations). This would necessarily mean that the persons falling in special reservations (vertical) have to be adjusted in their respective horizontal categories. In this process, it is for the legislature/executive to evolve the appropriate methodology to give effect to the reservations and ordinarily the Courts, which have no expertise in this field, do not interfere unless the action is per se illegal or unconstitutional.

The plea raised by the petitioners that if quota for NCC is worked out on the seats available in each vertically reserved category, persons belonging to categories other than O.C. category will be denied seats and therefore this method is arbitrary and discriminatory does not merit acceptance. It has to be kept in mind that special reservations are de hors the social reservations. The reason for the Supreme Court in classifying them as horizontal reservations is only to ensure that the over all percentage of reservations does not exceed reasonable limit of 50% and not to enable the candidates falling in the special reservation categories and belonging to one or the other social groups to be provided quota under the latter categories. Therefore, if a less meritorious candidate belonging to any social group fails to get a seat under special reservations, he cannot be permitted to say that his right under social reservation quota is violated. In our view, interlocking method is suggested by the Supreme Court to evolve a proper system of working out the reservations and not to confer a

further benefit on any of the social groups. Further, even if we work out the percentage of seats for NCC on the total number of 'A' category seats, by taking the example of Osmania University area, as given out at page 20 of the affidavit, the total number of seats comes to 4. By applying 50%, O.Cs will get 2 seats, 27%, BCs will get 1 seat and the remaining 1 seat may go to SC. But ST category will not get any seat. Thus, even if the State follows the method as suggested by the petitioners, the same does not ensure seats to persons of all social groups. Therefore, in a given method if a social group is denied the benefit of quota under special reservation category, that does not by itself constitutes a relevant factor to invalidate the method.

On an overall consideration of the issue, we are of the considered view that the amended rule does not violate any of the constitutional or legal provisions or the judgments of the Supreme Court.

Re – ISSUE NO.2:

Rule 9 (3) (a) of the Rules provided for ¼% (0.25%) of the seats to be reserved for NCC category candidates. The note given under sub-Rule 3 of Rule 9 stipulates that candidates claiming reservation benefits under special categories shall produce original documents in support of their claim before the committee for admissions which shall be entitled to refer the original documents for scrutiny of the competent authority which in the case of NCC candidates, the Director of NCC of Andhra Pradesh. Appendix III of the prospectus issued by Dr.NTR University for Health Sciences for the year 2007-2008 contains guidelines for allotment of seats in respect of special categories

including NCC. Clause (1) which deals with NCC, mentioned 3 priorities, namely; Priority-I, Priority-II and Priority-III. Under priority 1 NCC cadets participating at International level selected for the Youth Exchange Programme (for short 'YEP') will be given order of seniority certificate. In their affidavits, the petitioners averred that respondent No.5 participated in YEP only in the month of May, 2007, long after the qualifying examinations (petitioners treated intermediate as qualifying examination) and also after completion of EAMCET examination. The petitioners also stated that there is no clarity in the list of priority about qualifying examination leading to confusion. It is the case of the petitioners that since respondent No.5 completed intermediate examination, in the year 2005, the YEP Certificate obtained by her long thereafter in the year 2007ought not have been considered.

Sri P.V.Sanjay Kumar placed reliance on clause 2 (e) of Appendix III in which it is stated that the representation in the approved Games and Sports after qualifying at relevant common Entrance Test shall not be considered. We have not felt impressed by this argument of the learned counsel, because, Appendix III placed the special categories under two different heads namely NCC under Clause 1 and Sports and Games under Clause 2. In respect of NCC cadets, there is no stipulation regarding the point of time for acquiring the qualifications/certificates unlike clause (e) as referred to above under the head of Sports and Games.

It is not in dispute that by the date of counselling and allotment of seat in favour of respondent No.5, she has already secured YEP Certificate. Therefore, we are of the considered view that in the absence of a specific embargo as in the case of Sports and Games, the Certificate obtained by the NCC candidates after appearing in the

qualifying common Entrance Test cannot be disregarded.

We are, therefore, of the opinion that in the case of NCC candidates, the time of counselling for allotment of seats is the relevant point of time irrespective of whether the certificate is obtained prior or subsequent to the qualifying EAMCET Examination. We, therefore, reject the contention of the learned counsel for the petitioner that Respondent No.5 was not entitled to be treated under priority 1 category.

For the aforementioned reasons, we find no merit in the writ petitions and the same are accordingly dismissed.

As a sequel to dismissal of the writ petitions, WPMP.Nos.23651, 25245, 25244 and 23697 of 2007 filed by the petitioners for interim relief are also dismissed.

C.V. NAGARJUNA REDDY, J

G.S.SINGHVI, CJ

Date: 28 -09-2007.

Dvs/Es

*** HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE**
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

+WRIT PETITION Nos. 18426 and 18465 of 2007

% Dated 28-09-2007

P. Srividya

… Petitioner
(in WP.No.18426 of 2007)

Sardar Jaspal Singh and another.

… Petitioner
(in WP.No.18465 of 2007)

VERSUS

$ Government of Andhra Pradesh, represented by its Principal Secretary, Health, Medical and Family Welfare Department, Secretariat, Hyderabad and others.

… Respondents
(in WP.Nos.18426 & 18465 of 2007)

! Counsel for Petitioner in WP.18426/07: Sri Pannala Srinivas
Counsel for petitioner in WP.18465/07: Sri P.V. Sanjay Kumar

^Counsel for Respondent No.1 : Government Pleader for Health,
(in both writ petitions) Medical & Family Welfare Dept.

Counsel for Respondent No.2 : Shri D.V. Nagarjuna Babu,
(in both writ petitions) Standing Counsel.

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> HEAD NOTE:

? Cases referred

1. 1992 Supp (3) SCC 217
2. 1995 (5) SCC 173=1995 (4) scale SC 573
3. 1995 (2) SCC 560
4. AIR 2007 SC 71

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[1] 1992 Supp (3) SCC 217

[2] 1995 (5) SCC 173 = 1995 (4) scale SCC 573

[3] 1995 (2) SCC 560

[4] AIR 2007 sc 71